Contract # __069054__

STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES**: This contract is between the following agency of the State of Utah:
Department of Transportation Agency Code: 810 Traffic Management, Division referred to as (STATE), and the following CONTRACTOR:

ExeVision
Name

226 East 860 South
Address

Orem	UT	84058
City	State	Zip

LEGAL STATUS CONTRACTOR
[ ] Sole Proprietor
[ ] Non-Profit Corporation
[X] For-Profit Corporation
[ ] Partnership
[ ] Government Agency

Contact Person   Robert W Millet   Phone (801)-426-7777   Email   rmillet@exevision.com
Federal Tax ID#   311598292   Vendor # 110765A   Commodity Code # 90620000000 72515000000

2. **GENERAL PURPOSE OF CONTRACT**: The general purpose of this contract is to provide:

Enter into a partnership with a software development contractor to convert the current system into an Oracle version of PDBS. This new version of the PDBS software application is referred to as OPDBS. Following a successful conversion of the system, the contractor will (1) provide to UDOT, at no cost to UDOT, an unlimited, internal-use only license to OPDBS, including the source code and all work products, (2) will then own OPDBS and will have the opportunity to market it and any Contractor owned enhancements to other States and entities.

3. **PROCUREMENT**: This contract is entered into as a result of the procurement process on RX# 5600000099 , FY05 Bid# JD5040.

4. CONTRACT PERIOD: Effective date 03 Oct 2005 Termination date 30 September 2008 unless terminated early or extended in accordance with the terms and conditions of this contract. 1 (1) year renewal options.

5. CONTRACT COSTS: CONTRACTOR there will be no exchange of cost for this project authorized by this contract.

6. **ATTACHMENT A**: Division of Purchasing's Standard Terms and Conditions
   ATTACHMENT B: Scope of Work
   ATTACHMENT C: Special Terms and Conditions
   Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED**:
   a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
   b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #DG4029 dated 06/22/04 .

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR		STATE	
Contractor's signature	Date	Jim McMinimee, Project Development Director	Date
			OCT 05 2005
Type or Print Name and Title		Director, Division of Purchasing	Date
		CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE	OCT - 7 2005
		Director, Division of Finance	Date

Denice McCarthy	(801) 965-4761	(801) 965-4073	dmccarthy@utah.gov
Agency Contact Person	Telephone Number	Fax Number	Email Address

(Revision 08/26/2003)

REC'D OCT 17 2005

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.

2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.

11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.

18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.

19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).

20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.

22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).

25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Additional Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: July 5, 2005)

Overview:

The Utah Department of Transportation has developed a Windows client/server application named Project Development Business System (PDBS). PDBS allows UDOT, its consultants and contractors to document, bid, oversee, report and control preconstruction and construction projects.

The PDBS system was developed using PowerBuilder 7.0.2, RoboHelp X5, and an Informix 7 database. UDOT has standardized on an Oracle Platform and is looking to have PDBS converted to Oracle's tool set and database. Therefore UDOT would like to enter into a partnership with a software development contractor to convert the current system into an Oracle version of PDBS. This new version of the PDBS software application is referred to as OPDBS. Following a successful conversion of the system, the contractor will (1) provide to UDOT, at no cost to UDOT, an unlimited, internal-use only license to OPDBS, including the source code and all work products, (2) will then own OPDBS and will have the opportunity to market it and any Contractor owned enhancements to other States and entities.

1. General Description of PDBS Modules:

Estimate Module

This Module creates the engineer's estimate, (details, items, funding, stationing, stationing notes), maintains standard items, average unit bid prices including item price lookup capability, and provides an estimating tool enabling estimators to make informed decisions when preparing an engineer's estimate. This estimate is based on the project's funding, item history, quantity, low bids, all bids and project location. When the Engineers estimate is approved some of the information is loaded into the Electronic Bids Module (EBS).

Electronic Bids Module and LoadBids Module (EBS)

Electronic bidding is comprised of two modules, i.e., (1) The Electronic Bid Module including the Load Bids application (EBS), and (2) the Contractor Electronic Bid System (CEBS) on UDOT's website for downloading bid preparation and submission by contractors bidding for work on construction projects – see below. The Electronic Bids Module (EBS) creates advertising documents for the newspapers and Internet. It prepares bid proposals for bidders to download to the Contractor Electronic Bid System (CEBS) application. When project bids from contractors are to be opened, EBS receives the submitted bids from a secure repository via the Internet, opens the bids during a public bid opening using its LoadBids application, and publishes the results to the Internet for the general public. After bid opening, EBS creates reports, such as the bid abstract, contract documents, and information for the Civil Rights Module.

Contractor Electronic Bid System (CEBS) Module

The Contractor Electronic Bid System application allows contractors to load project specific bid items and other related information such as a disadvantaged business enterprise data, complete a bid and associated documents, sign electronically, and submit the bid via the Internet to a secure repository to be retained until the time of bid opening for the project.

Project Accounting Module

The Project Accounting Module loads awarded project information to allow tracking and payment of project items. It accumulates daily work activities including the quantities of work performed, location of the work, and other construction related information such as daily weather and temperatures. It calculates overall percent of project complete and categories of the work complete (Preconstruction Miscellany, Earthwork, Base, Surface, Structures, Incidental Construction, Landscaping, Traffic Control and Safety, Traffic Signal and Highway Lighting, and Drainage). It calculates percent of contract time used based on working day, calendar day or completion date contracts. It also, maintains daily diary activities, (weather and high/low temperatures, contractor workforce and equipment, project visitors and instructions to contractors) and prepares reports.

Electronic Field Book Application

Contract pay items and stationing information from the Project Accounting Module and Estimate Module are loaded to a hand held device (PDA). This application documents daily work activities at the project site, including pay items and quantities of work performed, labor, equipment, daily time charges, weather and temperature and diary information including instructions to the contractors. It synchronizes collected information with the Project Accounting Module for preparing contractor pay estimates and reports using a VPN connection via an Ethernet card and Sybase MobilLink 7.0.2 (1518), Sybase Advanced Server Edition 12.0, and DirectConnect to the Informix database. It also, provides resource access for Standard Specifications, Construction MOI, Materials MOI, Standard Drawings, Inspectors Manual and Project Specific Specifications.

Project Administration Module and Plan Desk Module

The Project Administration Module summarizes all of the project information for the entire Project Development Business System. Projects can be searched by; Project Number, County, Region, Contractor, Project Engineer, Project Manager, Consultant, Funding Type, project PIN, and Design/Build projects. Reports generated from this Module consist of Monthly Status of Roads, Monthly Status of Final Estimates, Quarterly Final Estimate Report, Performance Management Reports, Ad Hoc Reports, Contractor Prequalification plus others. The Module identifies, tracks, and reports information regarding addendums, advertisements, project assignments, award and proceed data, change orders, claims, contractor payments, final project information, Owner Controlled Insurance Program (OCIP), partnering, pre-award checklist, progress, subcontracts, utility agreements, and utility invoices. It maintains basic project information, company and employee data, and application and Module security. This Module includes a PlansDesk Module for verifying contractor pre-qualification, identifying plan holders, accounting for project plan and document sales, and creating automatic monthly billings to customers.

Civil Rights Module

The Civil Rights Module manages and tracks the Disadvantaged and Women Business Enterprise Program (DBE), Affirmative Action Programs, Project Inspections (Employee Interviews, Bulletin Boards, EEO Compliance Reviews, Labor Interviews, Harassment, Intimidation, and Coercion), Training Hours and Training Programs, and contractor provided DBE commitments and payments to subcontractors. It also produces Federal and State compliance reports and performance measures.

Contractor Registration Module

Every road construction contractor and subcontractor that desires to do business with UDOT must register yearly via UDOT's web page via this Module. After registering, the data submitted on the web pages are updated on the PDBS database to be used by the PDBS Modules.

Contractor Application Module

The Contractor Application provides contractors with the capability to access UDOT's PDBS system, via Citrix, to electronically prepare and submit the following required documentation to UDOT: (1) Request to Sublet Work, (2) Monthly DBE Payments, (3) Monthly Prompt Payment Affidavit, and (4) Monthly Partial Item Payments.

2. Additional PDBS Information:

    a. System language: PowerBuilder 7.0.2 and PowerBuilder Foundation Class (PFC). RoboHelp X5 for the applications' on-line help.
    b. DB: Informix 7.31.UC6A
    c. Number of tables: 150
    d. Number of windows: 209
    e. Number of datawindows: 1066
    f. Number of NVOs and User objects: 168
    g. Number of functions (common routines): 17
    h. Number of other objects: 50
    i. Total PowerBuilder objects: 1510
    j. HW platform:
        1) Database: HP D380 / HP-UNIX 11.0 or HP L2000 / HP-UNIX 11.0
        2) Application Server: PC / Windows2000 and Windows XP Pro
        3) Client: PC / Windows NT, Windows2000, Windows XP
    k. Connectivity:
        1) Ethernet LAN
        2) Remote via WAN
        3) Remote via Citrix and Internet client or ICA client
        4) HP iPAC Pocket PCs via VPN connection using an Ethernet card and Sybase MobilLink 7.0.2 (1518), Sybase Advanced Server Edition 12.0, and DirectConnect to the Informix database.
    l. Transaction volume: 24,000 per month
    m. Line speeds/types to remote locations: T1 (UDOT internal connections to UDOT Region Construction Field Offices), or Internet Browser (other users) Fractional T1 lines are available for some offices where end-users will access the converted OPDBS. UDOT and the Contractor will work together to document the available line speeds for all offices where OPDBS will be deployed. UDOT and Contractor will reach agreement on the methods for deploying OPDBS that will be used depending on the available line-speed at each office (such as using a CD for an initial deployment or initial deployment over the internet).

3. PDBS Interfaces to Other External Systems:

The PDBS Project Administration Module interfaces with UDOT's Oracle-based Project Management System (ePM) to obtain basic information about new projects such as project number, name, concept,

route, PIN, funding type, and any updated project information such as the concept and current commission approved amount.

UDOT's Electronic Plan Room also interfaces with the PDBS to provide the data necessary to generate a Plan Holders lists. PDBS also provides the customer identification number and password used by contractors to logon to the Electronic Plan Room.

4. Contractors Contributions and Expectations:

    a. Contractor will be responsible for financing the development of "OPDBS" (Oracle based PDBS) at Contractor's expense.

        1) Upon successful completion of the OPDBS development, Contractor will own all rights in the resulting software. The Contractor will be allowed to market, sell, and install completed portions of OPDBS, during the development of OPDBS, at other states and municipalities as long as the Contractor demonstrates continued progress in completing the entire OPDBS conversion, before, on, or within a 6 month delay for any one module, or an accumulative delay of 15 months for the entire project, beyond the approved Project Plan. UDOT will have an unlimited internal-use license to the OPDBS including the right to modify the "OPDBS" code at their desire or subcontract to modify the code, but UDOT is not allowed to distribute any portion of "OPDBS" to any other state, county, or municipality.

        2) If the schedule is not met, or development is not completed, or the contract is terminated, Contractor shall suspend selling OPDBS (either in its' entirety or portions thereof). Contractor will provide the complete system (to include but not limited to: executable and source code files, JAR files, class files, XML descriptor files, HTML files, and JDeveloper project files) to UDOT, free of charge. UDOT will have sole rights to OPDBS including the right to modify the "OPDBS" code developed by Contractor. UDOT may distribute any portion of "OPDBS" to any other state, county, or municipality.

    b. The development environment used to develop OPDBS will be Oracle and Oracle supported technologies. The technology used to develop OPDBS will be consistent with the State of Utah and UDOT's technical standards. The contractor will apprise UDOT of inconsistencies between the current PDBS user interface and UDOT standards and UDOT will provide direction as to whether the Contractor shall follow the UDOT standards or remain consistent with the PDBS interface. Any development outside of these standards must be discussed and written approval received from UDOT's ISS Management. Contractor agrees all functionality deployed remotely shall generate network traffic consistent with that generated with a "thin" client approach.

    c. Contractor will provide an initial overall project approach plan for development and implementation, including the replacement of the Informix database with an Oracle database, to be mutually agreed upon with UDOT Management. A final project plan will be provided by Contractor, within 60 days of final decisions made by UDOT and Contractor on front-end and remote technologies. If both parties cannot agree upon the final project plan within 60 days of the contract being signed, the Contractor shall suspend any further marketing of OPDBS until an agreement can be reached.

        1) UDOT and the Contractor anticipate a phased conversion plan, based on each module (or main menu items) in PDBS, as established by Project Plan.

such that end users may enter some information into the OPDBS application and other information into the PDBS application.

2) The Contractor will provide UDOT with a conversion program that replaces the Informix database with Oracle. The "swapping" of databases will allow UDOT and the contractor to work in the same environment for the backend in development, training, and production. All connectivity between the front-end (PowerBuilder) will provided in the database conversion programs. This approach has been prototyped at the beginning of the project and has received approval by UDOT as a successful method to manage the database environments.

d. Contractor will provide a work schedule of UDOT resources needed to work with Contractor, as part of the Project Plan. The Project Plan will include but not be limited to; tasks, assigned resources, estimated beginning and ending dates, etc. If UDOT's ISS resources are needed beyond the hours planned for this project, Contractor will supplement UDOT's ISS resources for the conversion project (E.G. Contractor will provide DBA support to UDOT, if project requires more DBA resources than planned). The Contractor cannot provide replacement support for the UDOT testing staff.

e. Contractor will agree to provide a Project Communication Plan, to be approved by UDOT. Communication Plan will also include basic methodology to ensure good communication and successful completion of each OPDBS module. Contractor will also establish and attend regular status meetings with UDOT conversion team to communicate project status, product delivery, problems or variances to UDOT during the life of the project.

f. Contractor agrees to develop and maintain their development environment at the same Oracle, PowerBuilder, and Informix versions as UDOT, during the development of OPDBS. The contractor and UDOT will co-ordinate upgrades to development environment and when the contractor identifies a need to upgrade some version of the development environment (for example, the Contractor anticipates beginning development using JDeveloper version 10.1.2.0.0 Build 1811), UDOT and the contractor will co-ordinate with UDOT's upgrade schedule so the contractor may continue to develop with a newer version(s) of development software with the agreement from UDOT to upgrade to the same version before production turn-over.

g. OPDBS will be developed to UDOT's functional specifications to mirror (or functional equivalence) the complete feature set and functionality currently found in PDBS at the time each module is being converted into Oracle. At the beginning of each development Module, a "snapshot" will be taken of the existing screens and reports that are included in that Module and this "snapshot" will serve as the conversion baseline. Any changes to the PDBS module made by UDOT after the "snapshot" will require the Contractor and UDOT to reach mutual agreement on the form of compensation appropriate for incorporating the changes in the OPDBS module. Modifications and enhancements made to PDBS PowerBuilder modules prior to the "snapshot" at the beginning of each defined Module will be incorporated in the conversion at no extra cost. UDOT may make changes to a PDBS PowerBuilder module that have an effect on a module that has

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already been converted to OPDBS or to a module that is in the current "snapshot" (for example, a change in database structure or changing a module so that it no longer provides information used by another module). As the Contractor discovers these "cascading" effects, the Contractor and UDOT will mutually agree on the form of compensation for making necessary changes to the OPDBS module(s).

h. The OPDBS user interface will be prototyped at the beginning of the project and approved by UDOT. The Prototype decision to include performance testing at various locations, as chosen by UDOT. Performance testing will focus primarily on using the application but evaluation of various methods to deploy and maintain the application will be part of performance testing once the application is deployed.

i Prior to the development of each module, UDOT and Contractor will discuss enhancements not currently found in PDBS which are desired or needed by UDOT, to determine if the enhancement will be included as part of development or deferred until development is completed (E.G. major enhancements that will impact the delivery schedule and are not needed immediately), or compensated by UDOT (E.G. enhancements desired by UDOT).

    1) Enhancements made to OPDBS by UDOT or funded by UDOT will be owned by UDOT. UDOT will be able to use these enhancements internally without violating the Contractor's intellectual property rights. UDOT does not desire to be in the business of marketing or sharing enhancements but desires to retain the rights and privileges of enhancement solely developed by UDOT that are not compensated by Contractor.

    2) Contractor has the option to compensate UDOT for enhancements funded by UDOT to be included in their OPDBS product. All enhancements that receive compensation from the Contractor cannot be licensed or transferred to any third party by UDOT. By mutual consent, compensation may include but not limited to, payments or providing new modules and other enhancements to OPDBS that are developed by the contractor that are not paid for by UDOT.

j Any development requiring end user licensing costs for remote contractor users will be discussed and approved by UDOT.

k. UDOT will receive an electronic copy of the system (all technical products needed to implement and support the complete system, including but not limited to; source code, database schema, online help files, etc.); UDOT will not provide the OPDBS source to other entities outside of UDOT for any reason other than to facilitate such entities' providing support for UDOT's business use and subject to UDOT's standard confidentiality requirements under an executed non-disclosure agreement.

l. As Contractor completes the development of each module, they will assist UDOT in successfully implementing each module into production. UDOT and the contractor will jointly agree on testing and production roll-out strategies for each module.

m. A Training Plan will be provided so that as modules are moved into a production environment, the Contractor will provide UDOT PDBS technical staff with training necessary to support the new OPDBS modules. This technical training will not be for basic JDeveloper concepts and use, but it will presume general JDeveloper knowledge on the part of the UDOT staff. The technical training will focus on specific uses of

JDeveloper for developing OPDBS and to provide for knowledge transfer from Contractor personnel to UDOT technical personnel. Oracle and OPDBS technical training (minimum 120 hours, throughout the life of the project, for ISS staff to learn the Oracle environment and "OPDBS" application). In addition to technical training, UDOT and the Contractor will jointly identify the changes in the user interface that may require training for business users of OPDBS. To the extent that OPDBS mirrors the functionality and user interface of PDBS, this training requirement may be minimal. Approximately 80 hours of user training will be offered to UDOT's Project Development Contracts personnel. Training will focus on changes in look and feel or functionality and will not replace the standard PDBS training offered by UDOT to contractors and new users.

n. Contractor will provide technical documentation and online help for each module in OPDBS.

o. All impacts to the approved Project Plan (schedule) shall be approved by UDOT's Business and Technical Lead and a new plan established. If impacts are not approved by UDOT or Contractor fails to make progress, (being 20% beyond the approved Project Plan, would be considered not making progress in the development of OPDBS, provided that delays or portions thereof attributable to UDOT shall not be included in computing the 20%), it will be considered a breach of the contract and Contractor forfeits its rights to own, develop, or market a product based on PDBS. Contractor will also be required to return all documents and materials provided to the Contractor and delete or destroy all copies of source code or derivative products.

p. Prior to the development of the OPDBS Field Book module Contractor agrees to work in conjunction with UDOT in determining the desired device (either PDA or laptop device), development language, technologies, connectivity, database, etc to be utilized in the development of the OPDBS Electronic Field Book module.

5. UDOT Contributions and Expectations:

a. Provide all PDBS technical product (Power Builder source code, libraries, data base schema, online help file, etc.). UDOT will provide test data from their Acceptance Testing (AT) PDBS environment. UDOT will create and maintain a Testing Oracle database and a Production Oracle database environment. UDOT will provide Oracle Application Servers for both the Test and Production environments. UDOT will provide external access through their VPN to the Oracle Testing database, the Oracle Test Application Server, and the PDBS AT database. UDOT will provide shell access (through the VPN) to the Oracle Test Application server. UDOT will provide PowerBuilder Windows servers with connections to both Oracle and Informix database for Test/Development and Production. UDOT will allow Contractor access to install PowerBuilder programs on PowerBuilder Windows Test server.

b. UDOT will provide a list of development standards to contractor. Any development outside these standards must be discussed and written approval received from UDOT's ISS Management.

c. UDOT will provide four (4) PowerBuilder 7.0.3 licenses and 1 Oracle Developer Suite license. UDOT will maintain a test and production environment in Informix and Oracle, allowing Contractor access to the test environment.

d. UDOT will provide space for one full-time OPDBS consultant to be housed at UDOT's Complex. This space will be shared with Contractor consultants who may be working on PowerBuilder PDBS modules for UDOT on a part-time basis.

e. UDOT will provide access to UDOT's internal user community for user testing and acceptability; I.E., UDOT will serve as a beta testing site, based on a mutually agreed schedule. UDOT will pay for its own internal labor costs for user testing.

f. UDOT will serve as a coordinator with UDOT's external customers (contractors and design/construction consultants) for testing needed by external customers, based on a mutually agreed upon schedule. UDOT will assist Contractor with coordinating testing with external users.

g. UDOT may inform Contractor of the maintenance and business changes made to PDBS during the development of OPDBS for Contractor to incorporate these changes into the OPDBS system to keep both systems in synch functionally.

6. Additional information.
    a. Expected tasks (but not limited to) for the Project Plan, per module:
        1) Plan Requirements
            1. UDOT review and approval
        2) Design
            1. Business logic
            2. Prototype of screens and reports when the design of the screen is materially changed during conversion.
            3. Performance Testing
            4. User Interface will be provided for UDOT review and approval when the module is changed from the existing PDBS Application.
        3) Build
            1. Database logic
            2. Middle-tier logic
            3. User interfaces
            4. UDOT review and Approval
        4) Unit Test of Modules
            1. UDOT review and approval of each module
        5) System & Parallel Testing
            1. Including Stress Testing and Performance Testing
            2. UDOT review and approval
        6) Database Integration Testing
            1. Data Conversion
            2. UDOT review and approval
        7) End-user Testing and Acceptance
            1. Fix bugs
            2. Validate requirements have been met
            3. UDOT review and approval
        8) End-User Training
        9) Deployment to Production

    b. Expected tasks (but not limited to) for the Communication Plan:
        1) Document business logic that is included in each module.
        2) Build Entity Relationship Diagrams (ERD)
        3) Where necessary, provide proof of concept for selection of various Oracle technologies.

4) For each module, demonstrate satisfactory user-interface, screen navigation, reporting, PDBS and OPDBS synchronization.

c. Changes to the Project Plan, Communication Plans, etc. must be discussed, negotiated and approved by UDOT.

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1. **Contract**: The contract shall be established for:
   a. three (3) years for development period,
   b. with a possible renewal option, to be approved by UDOT, of one (1) year,
   c. three (3) additional years for enhancements and support of the new system,
   d. for a maximum term of seven (7) years.

2. **Wages**: The Contractor shall be responsible for all applicable company wages in accordance with the Federal, State and local laws and ordinances.

3. **Non-Assignment**: The Contractor shall not sublet, assign or transfer any part of this contract without prior written approval from the Procurement Supervisor or the Procurement Manager of Utah Department of Transportation.

4. **Complete Contract:** This contract is intended by the parties as a final expression of their agreement, and supersedes all prior communications, representations and agreement, oral and written, between the parties with respect to the subject matter contained herein. The parties also intend this contract to be a complete and exclusive statement of the terms of their agreement. This contract may not be modified or terminated orally, and no claimed modification, rescission or waiver shall be binding on the STATE unless in writing, signed by a duly authorized representative of the STATE.

5. **NOTIFICATION** Notice given under this Contract shall be written, or sent by facsimile or other electronic means. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Facsimile or other electronic notice must be followed within three (3) days by written notice. All notices shall be effective when first received at the following addresses:

If to CONTRACTOR:	If to STATE:
Exe Vision	Utah Department of Transportation
Attention: Robert Millet	Attention: Michelle Verucchi
PO BOX 971134	Box 140100
Orem , UT 84097	4501 South 2700 West
rmillet@exevision.com	Salt Lake City, UT 84114-0100
Fax 801-426-7778	mverucchi@utah.gov
	Fax 801-965-4604

Also copies to:	also copies to:
Exe Vision	Utah Department of Transportation
Attention: Kim Wilson	Attention: Robert Krum
122272 South 800 East Suite# D	Box 140100
Draper, UT 84020	4501 South 2700 West
Fax 801-576-0575	

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Salt Lake City, UT 84114-0100
rkrum@utah.gov
Fax   801-965-4916

Utah Department of Transportation
Attention: Denice McCarthy
Box 148260
4501 South 2700 West
Salt Lake City, UT 84114-8260
dmccarthy@utah.gov
Fax   801-965-4073

6. **EMPLOYMENT OF STATE EMPLOYEES**   The CONTRACTOR agrees not to engage in any way the services on this contract of any present or former STATE employee who was involved as a decision maker in the selection or approval process or who negotiated the contract or modifications for this contract.

7. **NON-COMPETE AGREEMENTS**   The CONTRACTOR represents that its officers and employees are free to contract with the STATE and are not subject to restrictions by the terms of their present or past employment including, but not limited to, an agreement not to compete for a period of time, unless disclosure has been made. CONTRACTOR must disclose to the STATE any possible conflicts, in writing, before the contract is signed, and the STATE will evaluate whether to continue with contract execution. The STATE may elect to terminate a contract immediately with CONTRACTOR who is subsequently determined to be subject to such restrictions, without liability to the STATE. If the STATE elects to terminate the contract for this reason, the State will not provide 30 days prior notice to the CONTRACTOR. The CONTRACTOR indemnifies the STATE, UDOT, their employees and agents from and against any costs, expenses, damages, attorneys fees for claims arising out of or resulting from the alleged violation of a non-competition agreement. This indemnification does not apply if UDOT, through the Procurement Supervisor or Manager has specifically approved in writing CONTRACTOR's employment of an individual with a non-compete agreement.

8. **CONFIDENTIAL INFORMATION**   To the extent work under this contract requires the CONTRACTOR may be given access to confidential or proprietary business, technical, or financial information belonging to the STATE. The CONTRACTOR shall, after receipt thereof, treat such information as confidential. CONTRACTOR shall maintain, as confidential, and shall not disclose to any person outside its employ, nor use for purposes other than performance of this Contract, any specifications, drawings, blueprints, data, business information, or other confidential information which is learned by virtue of this Contract, except where required by law. CONTRACTOR agrees not to appropriate such information to their own use or disclose such information to other parties unless specifically authorized by the STATE in writing. The foregoing obligations, however, shall not apply to:

    a.   Information, which, at the time of receipt by the CONTRACTOR, is in public domain.

    b.   Information, which is published by UDOT or designee, after receipt by the

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CONTRACTOR, or otherwise becomes part of the public domain through no fault of the CONTRACTOR.

c.   Information which the CONTRACTOR can demonstrate was received from a third party who did not require the CONTRACTOR to hold such information in confidence.

9. **Request for Confidentiality.** CONTRACTOR understands that Utah law may allow the public to obtain copies of records created or maintained in carrying out this Contract pursuant to Title 63, Chapter 2, Government Records Access and Management Act, Utah Code Annotated. CONTRACTOR also understands that if it wants any of its records to be considered "confidential" for business purposes, it must provide UDOT a letter specifically doing so in accordance with Utah Code Ann. § 63-2-388. UDOT also notifies the CONTRACTOR that the decision to release a record may be made by a separate administrative agency or court and that UDOT, therefore, cannot guarantee confidentiality.

10. **QUALITY OF SERVICES** CONTRACTOR represents to STATE that it is experienced in and thoroughly familiar with all aspects of the services required hereunder and is properly qualified as applicable and is equipped, organized, and financially able to perform the services.

No changes in the services to be provided by CONTRACTOR under this Contract shall be made without STATE's prior written approval.

11. **DEVELOPMENT STANDARDS** CONTRACTOR agrees that all software development tools used for design, development, source code control and programs, will follow STATE and UDOT standards. All software development tools must receive prior approval by the Project Manager before being used in the development/design phase of the project. (Same as 4b. in Attachment "B" Scope of Work).

12. **PROGRESS REPORTS** The CONTRACTOR will submit progress reports at a minimum bi-monthly at a maximum monthly, following the format established by the STATE in sufficient detail to document the progress of the work

13. **CONFERENCES** The CONTRACTOR will prepare and present written information and studies to the STATE so it may evaluate the features and progress of the work. Either party may request a conference at a place designated by the STATE. The conferences shall also include inspection of the CONTRACTOR services and work products when requested by the STATE.

In regard to consultative work performed hereunder, the CONTRACTOR may be required to perform such additional work, during the warranty period, as is necessary to ensure any deliverable product hereunder meets the functional specifications as proposed by CONTRACTOR and approved by the STATE, or as otherwise agreed in writing as a part of this contract, without undue delays.

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14. **PROJECT REVIEWS** It is understood and agreed authorized representatives of STATE and, when Federal Funds are used, the Federal Highway Administration, shall have the right to review and inspect the work in process, and the CONTRACTOR facilities, at any time during normal business hours or by appointment.

15. **RIGHT OF FUTURE DEVELOPMENT** The STATE reserves all rights to future modification and development of the UDOT owned version of OPDBS for its use, and is in no way required to obtain the services of the CONTRACTOR for these developments or release these developments to the CONTRACTOR. Future development of this system will not violate any of CONTRACTOR'S intellectual property rights. The right of ownership of the UDOT owned version of PDBS survives the life of this contract.

16. **SIMILAR PRODUCTS** Should the STATE independently design, develop, or acquire ideas and concepts identical or similar to those provided by or contained in the CONTRACTOR product, CONTRACTOR agrees this Contract shall not prevent STATE from using such ideas or concepts to design, develop, or acquire hardware or software for its use, provided STATE does not copy the CONTRACTOR source and object code.

17. **Vested** At the successful completion of the contract and surviving the life of the contract, CONTRACTOR shall be vested with all rights, and title, including patent, copyright, trade secret, and trademark rights in CONTRACTOR work product (known as OPDBS), with rights to market their product. UDOT shall be vested with all rights, and title, including patent, copyright, trade secret, and trademark rights in the work product implemented at UDOT, with rights to modify, enhance, etc., but not to market or give the product to any entity outside of UDOT.

18 **Document & Data Ownership** All documents and data pertaining to work required by this contract will be the property of the STATE, for UDOT's use, and must be delivered to the STATE within 10 working days after termination of the contract, regardless of the reason for termination; and without restriction or limitation to their further use.

19. **INTELLECTUAL PROPERTY INDEMNITY** Upon State's written notification to CONTRACTOR, CONTRACTOR shall defend, at its expense, any claim against STATE alleging the Services, or any part thereof, infringe on any patent, copyright, trademark, trade secret, mask work, or other intellectual property interest in any country, and shall pay all costs and damages awarded. If an injunction against STATE use, sale, lease, license, other distribution of the Services or Product, or any part thereof, results from such a claim (or, if STATE reasonably believes such an injunction is likely), CONTRACTOR shall, at its expense, (and in addition to the CONTRACTOR other obligations hereunder) and as STATE requests, obtain for STATE the right to continue using, selling, leasing, licensing, or otherwise non-infringing but functionally equivalent. The provisions of this section shall not apply to any claim for infringement resulting solely from CONTRACTOR compliance with STATE detailed design specifications, which specifically name products in question, where provided.

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20. **FACILITIES AND MATERIALS** The CONTRACTOR and all personnel working under this contract shall not acquire, borrow, copy, or use in any manner software, documentation, or data on any STATE data processing facility for use other than as required to complete this contract.

21. **FAILURE TO COMPLETE** At any time the CONTRACTOR determines the contract work cannot be completed within the specified time, the CONTRACTOR must notify the STATE in writing, immediately. The STATE may, at its sole discretion, extend the contract by written modification. If CONTRACTOR is not able to complete development of the entire Oracle based PDBS system, or develop the system in standards established by the State of Utah or UDOT, the CONTRACTOR will return the source code to UDOT and remove all copies from their possession, provide UDOT with all of the work product associated with OPDBS, and forfeit all Intellectual Property Rights to the work product and any future development based on the concepts and ideas found in PDBS.

22. **NON-PERFORMANCE** If, at any time, CONTRACTOR fails to demonstrate the required expertise (as represented in the CONTRACTOR proposal) or fails to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to replace individual(s) with a competent individual(s). The STATE Project Manager must approve this replacement. If the CONTRACTOR fails to accomplish project objectives or meet schedule commitments established in meetings with the STATE Project Manager, Contractor will be considered non-performing. CONTRACTOR shall cure any of the above breaches and notify STATE of such cure within two (2) weeks from receipt of a notice to cure from STATE. If CONTRACTOR fails to cure, STATE may terminate this Contract by giving CONTRACTOR written notice. STATE shall have no liability to CONTRACTOR. STATE may, at its option and without regard to CONTRACTOR ability to cure, terminate this Contract for cause in the event of any second or subsequent instances of the above breaches by CONTRACTOR.

23. **TERMINATION** The occurrence of any of the following, but not limited to, constitutes a breach by CONTRACTOR unless corrected by CONTRACTOR within two (2) weeks:

CONTRACTOR failure to deliver of modules, based on approved work plan, within 20% of the approved schedule.

Services performed and/or product delivered by CONTRACTOR does not conform to the terms set forth in this Contract.

CONTRACTOR fails to perform any material provision of this Contract.

CONTRACTOR assigns this Contract, or any obligation or rights hereunder. (The term "assigns" to include, without limitation, a transfer of majority.)

CONTRACTOR sells or merges with a third-party (not a parent or subsidiary company) without the prior written consent of STATE.

CONTRACTOR becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of CONTRACTOR assets.

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CONTRACTOR shall cure any of the above breaches and notify STATE of such cure within two (2) weeks from receipt of a notice to cure from STATE. If CONTRACTOR fails to cure, STATE may terminate this Contract by giving CONTRACTOR written notice. STATE shall have no liability to CONTRACTOR. STATE may, at its option and without regard to CONTRACTOR ability to cure, terminate this Contract for cause in the event of any second or subsequent instances of the above breaches by CONTRACTOR

24. **TERMINATION FOR OTHER THAN NON-PERFORMANCE** If the STATE terminates for reasons other than non-performance, the CONTRACTOR is relieved of any performance responsibilities on the project. Contract will be able to retain the work product and intellectual property for the work completed at time of contract termination.

25. **DISPUTES** Any dispute arising under this Contract, which is not resolved by an OPDBS Project Steering Committee (UDOT to supply 3 team members and Contractor to provide 2 team members), mediation or other method of alternative dispute resolution, shall be heard in the Third District Court in Salt Lake County, Utah pursuant to the governing laws of the State of Utah. Pending settlement of the final decision by the court, CONTRACTOR shall proceed diligently with the performance of the Contract in accordance with STATE direction.